INSURANCE COVERAGE FOR SUPERSTORM SANDY CLAIMS

Superstorm Sandy has devastated the New Jersey Shore and other parts of New Jersey, causing untold damages to personal residences and businesses. For those individuals and businesses fortunate enough to have insurance coverage, particularly flood insurance coverage, steps should be taken immediately to protect your rights under your insurance policies. The first step in the process is to identify what insurance policies you may have which may respond to the loss. Individuals should look to their homeowner's policies for damage to their home and to their automobile policies for damage to their automobiles. Businesses should look primarily to their business owners or commercial property policies. Both businesses and individuals should examine any excess or umbrella insurance policies they may have.

Once policies are identified, claims should immediately be reported to your insurers. The fastest and simplest way of providing notice is through your insurance broker, which should be done in writing with the request that your broker provide notice to your insurer. You should request that your broker provide you with a copy of the notice it provides to the insurer. Most insurance agents are extremely helpful in processing claims and assisting insureds with their claims. Notice can also be given directly to your insurer and many insurers are setting up mobile claim units at which claims can be reported.

There are different coverages available under different types of policies as discussed below. While many policies contain standard terms and conditions, each policy has its own language and must be carefully reviewed to determine the specific coverage provided under that specific policy. The discussion of insurance policies below is based on fairly standard language

which appears in many policies but it must be emphasized that you need to review the specific language in your policy which may significantly increase or decrease the coverage provided to you.

Business Owners or Commercial Property Coverage

Sandy has caused incalculable damage to businesses. These damages include damage to a company's real property, its personal property and its loss of business. There may be coverage for such losses under a company's business owner's policy or commercial property policy. Business owner's policies or commercial property policies should be carefully reviewed to determine what coverages are provided and what limits of coverage are available.

1. **Nature of Coverage Provided:**

There are generally two types of coverages provided under business owners or commercial property policies. The first is "all risk" coverage which provides coverage to the insured's property for all risks of direct physical loss or damage. This is a broader form of coverage and typically is more expensive to obtain. Under an all risk policy, there will be coverage for direct physical loss or damage to the insured's property irrespective of the cause of loss, subject to the exclusions in the policy.

The second form of coverage is "named" peril coverage. This provides more narrow protection than the all risk coverage and provides coverage for risk of direct physical loss or damage caused only by specifically listed perils in the policy. Under this more limited coverage, there is coverage for direct physical loss or damage only if caused by the listed peril in the policy. As in an all risk policy, the coverage provided is subject to the policy's exclusions.

The most significant exclusion for Sandy-related claims will be the flood exclusion. A typical flood exclusion defines flood to mean a general and temporary condition of partial or complete inundation of normally dry land areas due to: (a) flood, surface water, rising water, waves, tides, tidal water, storm surge, tsunami, overflow of any body of water or their spray, all whether wind driven or not; or (b) water that backs up from any sewer or drain, or water that leaks or flows from below the surface of the ground. Where a policy contains a flood exclusion, damage caused solely by the flood, as defined in the policy, may be excluded.

However, there is a critical distinction between damage caused by wind, which is normally covered under an all risk policy or a named peril policy, and damage caused by flood. A storm such as Superstorm Sandy may have damages caused by both flood and wind. To the extent the damage to the insured's property is caused by wind, there should be coverage under the policy, subject to other exclusions, even if a flood causes additional or separate damage. By way of example, the wind may knock a tree down onto the insured's property causing physical damage to the property. Rain may penetrate the property as a result of the damage caused by the tree. This damage would likely be covered as wind is a covered cause of loss and the damage to the property, including the water damages, resulted from the wind. However, if during the same storm a tidal surge caused water to flood other portions of the property, that damage may not be covered if there is a flood exclusion.

If a dispute arises between you and your insurer as to whether damage to your property is caused by wind or flood, it may be necessary to retain an expert in the area of cause and origin of insurance losses to determine what damage was caused by wind compared to damage caused by

flood. Additionally, eyewitness testimony will be helpful so you should speak with any of your neighbors, employees or other persons who may have witnessed how your business property has been damaged. The same applies to individuals seeking coverage under their homeowner's or flood policies.

2. Coverages Provided Under a Business Owner's Policy or Commercial Property Policy:

Business owner's policies and commercial property policies typically contain coverages for damage to buildings, for business personal property, and for business income / extra expense. Other additional coverages may also be provided and the policy must be carefully reviewed for such additional coverages.

a. Coverage for Buildings.

The declarations page of the policy will identify which buildings owned by the insured are covered under the policy. Values are normally provided for the buildings. The policies may provide coverage for either the replacement cost of the structure or for the actual cash value of the structure. The policy should be reviewed carefully to determine what type of coverage is provided for damage to the property. If there is a covered loss, the insurer will pay the claim up to the policy limits for building coverage identified on the declarations page. Photographs or videotape should be taken of all damage to the structure.

b. Coverage for Business Personal Property.

Most business owners or commercial property policies provide coverage for personal property owned by the insured. The amount of coverage for such personal property is normally identified in the declarations page. Upon a covered loss, the insured should carefully document

and inventory all the personal property which it has lost for which it will be submitting a claim. The insured will be required to submit a sworn proof of loss in which the insured must identify under oath all of the property it claims to have been damaged for which it is seeking insurance coverage. Photographs or videotapes should be taken of all damaged personal property. Unless required to do so for safety or health reasons, the damaged personal property should not be discarded until the adjuster appointed by the insurer has come to inspect your property. If you discard any damaged property for which a claim is submitted, the insurer may disclaim coverage. In New York policyholders can submit photographs of damaged property as proof of loss of the property.

c. Business Interruption Coverage.

This coverage protects the insured against loss of income resulting from damage to the insured property. Business interruption coverage is often subject to complex deductibles and co-insurance provisions which must be carefully reviewed. The insured should work carefully with its attorney and broker in presenting the business interruption claim. Outside professionals, including accountants or professional adjusters, may be of assistance in presenting such a claim to the insurer. Some of the costs incurred in calculating the business interruption loss by professionals such as accountants may be recoverable under the policy, but fees for attorneys and public adjusters typically will not be covered.

As an incentive to insureds to move quickly to restore the insured property so that business operations can commence as soon as possible, insurers will normally pay the insured's reasonable expense to restore operations.

If there is no direct physical damage to the insured's property, then the business interruption coverage may not apply. However, some policies provide coverage for a business interruption loss resulting from damage to a utility service caused by a covered cause of loss. Many businesses lost power and were unable to conduct business without sustaining any physical damage to their property. If the business owners or commercial property policy includes a utility service – direct damage endorsement, or similar type of endorsement, there may be limited coverage for a business interruption loss caused by damage to a power supply service, including utility-generating plants, switching stations, substations, transformers and transmission lines, by wind damage. The policy must be reviewed to determine if such coverage exists and in what amount. Typically the amount is less than the coverage provided where there is direct physical damage to the insured's property.

d. Coverage for Damage Resulting From Acts of Civil Authority.

Some policies provide this coverage which provides that when a covered cause of loss causes damage to property other than the insured's property, the insurer will pay the loss of business income and extra expense caused by action of civil authority that prohibits access to the insured's premises. This coverage, if it is provided in the policy, may require that: (1) access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage and the insured's property is within that area but not more than five miles from the damaged property; and (2) the action of civil authorities is taken in response to dangerous physical conditions resulting from the damage or continuation of the covered cause of loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

e. Debris Removal.

Many policies provide additional coverage for debris removal in which the insurer agrees to pay the reasonable expenses incurred to remove debris from the covered property caused by a covered cause of loss. Typically there will be sub limits of coverage for this additional coverage which will be identified on the declarations page or a separate endorsement to the policy. This may be a very significant coverage as a result of the substantial debris generated from Sandy's destruction.

Business Excess and Umbrella Policies

Many businesses may have excess or umbrella property insurance coverage. These policies should be carefully reviewed to determine whether they provide additional coverage beyond the coverage provided in the primary policy in addition to the increased limits of coverage which may be provided in the umbrella and excess policies. The umbrella and excess policies typically "follow form" to the primary policy, which means they are normally subject to the same terms and conditions as the primary policy. However, some excess or umbrella policies may contain additional exclusions which may not be excluded from the primary policy, including an exclusion for flood. Both the primary and excess and umbrella policies should be carefully reviewed in this regard.

Individuals who have suffered damage to their homes and personal property will look primarily to their homeowner's policies and flood policies, if they have such coverage. For damage to your automobile, you should examine your automobile policy to determine if you have comprehensive insurance coverage.

Standard Homeowner's Policy

1. Dwelling Coverage:

A standard homeowner's policy typically covers damage to the insured dwelling up to the policy limits identified in the policy. The declarations page of the policy should be reviewed to determine the limits of coverage available. This coverage insures the residence premises identified in the declarations page and may include materials and supplies located on or next to the residence premises used to construct, alter or repair the dwelling. There is typically no coverage for land, including the land on which the dwelling is located.

2. Other Structures:

There may be coverage under your homeowner's policy for other structures which are set apart from the residence premises. The declarations page will identify such other structures as well as the limits of coverage.

3. Personal Property:

A typical homeowner's policy provides insurance coverage for personal property owned or used by an insured. This coverage may include damage to property owned by others while the property is on the residence premises occupied by an insured. There also may be limited coverage for an insured's personal property located at an insured's residence other than the residence premises listed in the declarations page. However, this is a limited coverage which may be 10% of the limit of liability for the personal property coverage or $1,000, whichever is greater. The declarations page must be reviewed for the limits of coverage. There may be endorsements issued to the policy providing for greater limits of coverage for certain specified property such as specific scheduled jewelry. Certain property, such as non-scheduled jewelry,

furs, money, securities, watercraft, trailers, and certain portable electronic equipment may have special limits of liability, typically in amounts of $2,500 or less.

4. Loss of Use:

Standard homeowner's policies provide coverage for loss of use. The declarations page must be reviewed to determine whether such coverage is provided and, if so, in what limits. The loss of use coverage includes the following coverages:

(a) Additional Living Expense. If the residence premises where you reside is not fit to live in as a result of a covered loss, the insurer will cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living. Payment will usually be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

(b) Fair Rental Value. If a portion of the residence premises is rented to others and is not fit to live in as a result of a covered loss, the policy may cover the fair rental value of such premises plus any expenses that do not continue while it is not fit to live in.

(c) Civil Authority Prohibits Use. If a civil authority prohibits you from use of the residence premises as a result of direct damage to neighboring premises by a peril insured against, there may be limited coverage. This coverage may include additional living expense and fair rental value described above, but for no more than two weeks.

5. Additional Coverages:

Many standard homeowner's policies provide for additional coverages which must be identified on the declarations page, an endorsement or specifically provided for in the policy. These additional coverages include:

(a) Debris Removal. The homeowner's insurer will normally pay the reasonable expense for the removal of debris of covered property if a peril insured against that applies to the damaged property causes the loss. This expense is included in the limit of liability that applies to the damaged property. However, if the amount paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit may be available for such expense under some policies.

In addition, some policies provide for payment of the reasonable expense, up to $1,000, for the removal from the residence premises of trees on the residence premises, or a neighbor's trees which fell on the neighbor's premises, provided there is damage to a covered structure or the trees block the driveway which prevent the use of a motor vehicle from entering or leaving the residence premises.

(b) Reasonable Repairs. If this additional coverage is listed on the declarations page, the insurer may pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by an insured

peril from further damage. However, this coverage does not increase the limit of liability that applies to the covered property.

As in a business owner's or commercial property policy, the coverage provided under a homeowner's policy may be on an "all risk" basis, which provides broad coverage for damage caused by any peril, subject to specific exclusions, or the more narrow "named peril" coverage, which provides coverage for loss caused by certain listed perils. Normally damage from wind storm but not from flood are covered. However, the coverage provided under the homeowner's policy is subject to certain exclusions. Unfortunately for Superstorm Sandy-related claims, many homeowners' policies will exclude coverage for water or flood damage. A typical exclusion in a homeowner's policy will provide that the insurer does not insure for loss caused directly or indirectly by: "Flood, surface water, waves, including tidal wave and tsunami, tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind, including storm surge." Alternatively a named peril policy may not list flood as a covered peril. As with commercial policies, a careful distinction must be drawn between damages caused by water or flood, which may be subject to the above exclusion, and damages caused by wind. As in the example above, homes which have had basements or other portions of the residence premises flooded by the storm surge may be subject to the water or flood exclusion if the storm surge was the sole cause of the damages. However, if a tree was not knocked down by the winds and caused damage to the structure, then there would likely be coverage for the wind-caused damage.

Flood Insurance Coverage

Flood insurance may be obtained for certain homes. Most flood policies are offered through the National Flood Insurance Program ("*NFIP*"). However, private insurers may offer flood coverage which may provide more coverage with higher limits than provided for in policies issued through NFIP. These policies provided coverage for damage to the residence premises and certain personal property caused by flood. The coverage for damage to personal property may be more limited than that provided in a homeowner's policy. Where an insured owns a separate flood policy in addition to a homeowner's policy, notice of claim should be given to both insurers as there may be wind-covered loss covered under the homeowner's policy and flood-covered loss covered under the flood policy.

Deductibles

The coverage provided by the homeowner's policies may be subject to certain deductibles which will be identified on the declarations page. Most significantly with regard to Sandy, most policies contain a hurricane deductible which is typically in the amount of 2% of the limits of coverage. However, Governor Christie has issued a proclamation that the storm was not a hurricane as defined in the policies and that therefore the hurricane deductibles will not apply. This is a very favorable proclamation for insureds in New Jersey. The governors in New York and Connecticut have issued similar proclamations.

Automobile Coverage

Unfortunately, many victims of Sandy have had their automobiles damaged or destroyed. Automobile liability insurance is mandatory in the State of New Jersey so all insureds should have liability coverage which protects them in the event they cause injury to another person or

property. However there are other coverages available under an automobile policy which protect the insured for damage to their own vehicle. These are separate coverages which are not mandatory and which must be purchased from the insurer. These coverages include comprehensive insurance coverage which covers damage to an insured vehicle. The declarations page of the automobile policy should be reviewed to verify that such comprehensive insurance coverage has been purchased and if so in what amount. A deductible will likely apply. If you have such comprehensive automobile insurance coverage and your automobile was damaged or destroyed, notice of the claim should immediately be reported to your automobile insurer.

Umbrella and Excess Policies

Umbrella and excess insurance coverage is generally coverage which is provided above the insurance coverage provided in a primary insurance policy. These policies normally insure the same risk as the primary policy but provide greater limits of coverage. However, these policies may also provide additional coverage beyond that provided in the primary policy. Such umbrella and excess policies should be carefully reviewed to determine if there is additional coverage provided beyond that available in the primary homeowner's policy, flood and automobile policies.

Lost Policies

Many individuals and businesses have lost their policies in the storm. In that event you should contact your insurance broker who should have some record of your insurance coverage.

Claims For Benefits Under FEMA

In the event a homeowner or business owner either has no insurance coverage, or the insurance coverage does not provide flood coverage, you may be able to obtain the benefits provided by FEMA. A memorandum which details the FEMA process can be viewed at www.ghclaw.com. It is important that anyone seeking FEMA benefits immediately register with FEMA in order that a FEMA inspector can come to your property and determine whether you are eligible for FEMA benefits.